

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
UNITED STATES OF AMERICA)	
v.)	CRIMINAL NO. 03-10344-DPW
)	
BRUCE GORDON HILL,)	
Defendant.)	
_____)	

UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COUNTS
ONE, THREE, FOUR and SIX OF THE SECOND SUPERSEDING INDICTMENT

Defendant's motion to dismiss is essentially moot. The Supreme Court's decision in United States v. Booker, 2005 WL 50108 (Jan. 12, 2005), effectively resolves the issues raised by Defendant's motion.

Defendant's motion was based upon a single purported infirmity in the Second Superseding Indictment, the inclusion of "Sentencing Factors" in an addendum at the end of the charging instrument. Defendant does not dispute that the charges in the original Superseding Indictment were timely filed. Apart from the inclusion of a now-obsolete addendum setting forth "sentencing factors," the Second Superseding Indictment is identical to the first. In light of Booker, the sentencing allegations in the addendum are essentially superfluous, at least insofar as they are set forth in the charging instrument. The United States agrees that such allegations need not, indeed should not, be submitted to the jury.

The Booker decision makes clear that the provisions of the United States Sentencing Guidelines are not to be treated as "elements" of the charged offenses. Accordingly, the statute of limitations issues raised in Defendant's motion have proved to be illusory.

Defendant's Motion to Dismiss should therefore be denied.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

dated: January 14, 2005

By: /s/ Paul G. Levenson
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CERTIFICATE OF SERVICE

I hereby certify that on this day I will cause a true copy of the above document to be served by First Class Mail upon counsel of record for defendant, addressed as follows:

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Dated: January 14, 2005

/s/ Paul G. Levenson
Paul G. Levenson